



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2012-0494, FRL-9802-7]

Approval and Promulgation of Implementation Plans; Oregon:

Heat Smart Program and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to Oregon's State Implementation Plan (SIP) submitted to the EPA by the State of Oregon on October 5, 2011, June 8, 2012, and November 28, 2012. The submitted revisions relate to Oregon's Heat Smart program, rules for enforcement procedures and civil penalties, and contain minor revisions and clarifications to general air pollution definitions, rules for stationary source notification requirements, and requirements for fuel burning. The EPA is approving these SIP revisions because the revisions meet the requirements of the Clean Air Act.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2012-0494. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of

which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo at (206) 553-6125, spenillo.justin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” are used, it is intended to refer to the EPA.

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I. Background

On October 5, 2011, June 8, 2012, and November 28, 2012, the State of Oregon submitted revisions to the EPA for approval into the Oregon SIP. The submitted revisions relate to Oregon’s Heat Smart program in Oregon Administrative Rules (OAR) Chapter 340, Division 262 (OAR 340-262), the enforcement procedures and civil penalties rules (OAR 340-012), and contain minor revisions and clarifications to general air pollution definitions (OAR 340-200),

rules for stationary source notification requirements (OAR 340- 210), and requirements for fuel burning (OAR 340-228). In a proposed rule published on February 11, 2013 (78 FR 9651), the EPA proposed to approve these revisions to the Oregon SIP. An explanation of the Clean Air Act (CAA) requirements and implementing regulations related to these SIP revisions and the EPA's reasons for approving the SIP revisions were provided in the notice of proposed rulemaking on February 11, 2013, and will not be restated here. The public comment period for this proposed rule ended on March 13, 2013.

II. Response to Comments

The EPA received two comments on the proposed rule. The first commenter requested clarification on the scope of the definition of solid fuel burning devices at OAR 340-262-0450. Specifically, the commenter requested and received confirmation from the EPA that barbeques and campfires were not included in the definition of solid fuel burning devices at OAR-340-262-0450. The second commenter supported the approval of the Oregon Heat Smart program rules and their contribution to reduced emissions and improved air quality. We agree with this comment and no response was necessary. Both comments are available in the docket.

III. Final Action

The EPA is approving the October 5, 2011, June 8, 2012, and November 28, 2012 SIP submittals from the State of Oregon as meeting the requirements of the CAA. Specifically, the EPA is approving revisions to OAR 340-012, OAR 340-200, OAR 340-210, OAR 340-228 and OAR 340-262 because the revisions are consistent with CAA requirements. In addition, the

EPA approves the removal from the SIP of the regulations previously codified at OAR 340-262-0010 to OAR 340-262-0330 because the citations for these regulations have been renumbered.

With regard to OAR 340-012, the EPA is approving the revisions to OAR 340-012, subject to the following qualifications. The EPA's authority to approve SIP revisions extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of Section 110 of the CAA. Therefore, the EPA is approving the revisions to OAR 340-012 only to the extent they relate to enforcement of requirements contained in the Federally-approved Oregon SIP. Additionally, the EPA is not incorporating these rules by reference into the Code of Federal Regulations because the EPA relies on its own independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

The submittals contain an amendment to OAR 340-200-0040, which describes the State's procedures for adopting its Clean Air Act Implementation Plan and references all of the state air regulations that have been adopted by the Environmental Quality Commission for approval into the SIP (as a matter of state law), whether or not they have yet been submitted to or approved by the EPA. We are proposing no action on the revisions to OAR 340-200-0040 in the SIP submittal because it is unnecessary to take action on a provision addressing State SIP adoption procedures and because the federally-approved SIP consists only of regulations and other requirements that have been submitted by ODEQ and approved by the EPA.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.
(See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Volatile Organic Compounds, Reporting and recordkeeping requirements .

Dated: April 3, 2013

Dennis J. McLerran

Regional Administrator

Region 10

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart MM - Oregon

2. Section 52.1970 is amended by adding paragraphs (c)(139)(i)(D) and (E), (c)(153)(i)(H) and (I), and (c)(157) to read as follows:

§52.1970 Identification of plan.

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(c) * * *

(139)* * *

(i) * * *

(D) Based on a SIP revision submitted by Oregon on October 5, 2011, Oregon Administrative Rules Chapter 340, Division 262 “Residential Woodheating,” as effective October 14, 1999, the following provisions are removed from the SIP: 262-0010, 262-0020, 262-0030, 262-0040, 262-0100, 262-0110, 262-0120, 262-0130, 262-0200, 262-0210, 262-0220, 262-0230, 262-0240, 262-0250, 262-0300, 262-0310, 262-0320, 262-0330.

(E) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 210 “Stationary Source Notification Requirements,” as effective October 8, 2002, the following provisions are removed from the SIP and replaced by revised provisions effective May 17, 2012: 210-0100, 210-0110, 210-0120, 210-0250.

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(153)* * *

(i) * * *

(H) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 200 “General Air Pollution Procedures and Definitions,” the following provision 340-200-0020, as effective May 1, 2011, is removed from the SIP and replaced by revised provision 340-200-0020 as effective May 17, 2012.

(I) Based on a SIP revision submitted by Oregon on June 8, 2012, Oregon Administrative Rules Chapter 340, Division 228 “Requirements for Fuel Burning Equipment and Fuel Sulfur Content,” the following provisions 228-0020, 228-0200, 228-0210, as effective November 8, 2007, are removed from the SIP and replaced by revised provisions 228-0020, 228-0200, 228-0210, as effective May 17, 2012.

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(157) On October 5, 2011, June 8, 2012, and November 28, 2012, the Oregon Department of Environmental Quality submitted revisions to the Oregon Administrative Rules (OAR) Chapter 340 as revisions to the Oregon State Implementation Plan (SIP). The submissions relate to Oregon’s Heat Smart program, enforcement procedures and civil penalties, general air pollution definitions, rules for stationary source notification requirements, and requirements for fuel burning.

(i) Incorporation by reference.

(A) The following sections of the OAR Chapter 340, Division 262, effective March 15, 2011: Division 262, Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices: Rule 0400 Purpose and Applicability of Rules; Rule 0500 Certification of Solid Fuel Burning Devices for Sale as New; Rule 0700 Removal and Destruction of Used Solid Fuel

Burning Devices; Rule 0800 Wood Burning and Other Heating Devices Curtailment Program; Rule 0900 Materials Prohibited from Burning.

(B) The following sections of the OAR Chapter 340, Division 262, effective May 17, 2012: Division 262, Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices: Rule 0450 Definitions; Rule 0600 New and Used Solid Fuel Burning Devices Sold in Oregon.

(ii) Additional Material:

(A) The following revised sections of Oregon Administrative Rules Chapter 340, effective November 10, 2008: Division 12 Enforcement Procedures and Civil Penalties: Rule 0030 Definitions, Rule 0038 Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation, Rule 0155 Additional or Alternate Civil Penalties, Rule 0170 Compromise or Settlement of Civil Penalty by Department.

(B) The following revised sections of Oregon Administrative Rules Chapter 340, effective March 15, 2011: Division 12 Enforcement Procedures and Civil Penalties: Rule 0054 Air Quality Classifications and Violations, Rule 0140 Determination of Base Penalty.

[FR Doc. 2013-14501 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]